

2009 DRAFTING REQUEST

Bill

Received: **11/13/2008**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Byrnes**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Byrnes, BB0203 -

Topic:

Oil company assessment

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 11/13/2008	kfollett 11/17/2008		_____			State
/P1			rschluet 11/17/2008	_____	lparisi 11/17/2008		State
/P2	jkreye 01/21/2009	kfollett 01/21/2009	mduchek 01/21/2009	_____	lparisi 01/21/2009		State
/P3	jkreye 01/28/2009	kfollett 01/28/2009	phenry 01/28/2009	_____	lparisi 01/28/2009		State
/P4	jkreye 01/30/2009	kfollett 01/30/2009	phenry 01/30/2009	_____	cduerst 01/30/2009		State

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	jkreye 02/03/2009	kfollett 02/03/2009		_____ _____			
/P5	jkreye 02/05/2009	bkraft 02/05/2009	phenry 02/03/2009	_____ _____	lparisi 02/03/2009		State
/P6			phenry 02/05/2009	_____ _____	sbasford 02/05/2009		

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/P5		/P6 bjk ² / ₅	phenry	_____	lparisi		
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1/30
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/?	jkreye	1P15f 11/17		MD			
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FE Sent For:

<END>

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Creation of an Oil Company Assessment
- Tracking Code: BB 0203
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Tyler Byrnes
 - Phone: 266-1039
 - Email: tyler.byrnes@wisconsin.gov
- Agency acronym: DOT
- Agency number: 395
- Priority (Low, Medium, High): High

Intent: Please prepare a draft creating an assessment on oil companies for the privilege of doing business in the state that would apply to gross receipts derived from the first sale of motor vehicle fuel by a supplier for sale in the this state, for sale for export to this state or for export to this state. Assessment would be applied on a tiered basis, with the highest tier assessment rate at 2.5% of gross receipts. Pass through of assessment by suppliers to consumers would be prohibited. Revenues from the assessment would be deposited in the transportation fund. The draft of the assessment should resemble the Senate version from the 2007-09 budget bill. Effective date would be October 1, 2009, or the effective date of the bill, if after October 1, 2009.

Department of Transportation

2009-11 Biennial Budget Request

STATUTORY MODIFICATIONS

TOPIC: Establish State Oil Company Assessment

DESCRIPTION OF CHANGE:

Create an oil company assessment that would initially apply to motor vehicle fuel sales on October 1, 2009 or the effective date of the bill if later than October 1, 2009. Deposit revenues from the assessment to the transportation fund. The oil company assessment would impose, for the privilege of doing business in this state, an assessment on each motor vehicle fuel supplier, on a tiered basis a rate of up to 2.5% of the supplier's gross receipts in each calendar quarter. Specify that the assessment would apply to the gross receipts that are derived from the first sale of motor vehicle fuel by the supplier for sale in this state, for sale for export to this state, or for export to this state.

The oil company assessment should incorporate the following provisions:

- The assessment will be applied on a tiered basis (see table below) and be reported and paid on a quarterly basis;
- The rate of assessment is applied to the supplier's gross receipts from the first sale of motor vehicle fuel;
- Require persons, including terminal operators not licensed in this state as motor fuel suppliers, to report and pay the oil company assessment on any motor vehicle fuel in storage in this state for which the assessment has not already been paid (exclude motor fuel already in a motor vehicle fuel tanks);
- The assessment will be applied to first sales on October 1, 2009 or the effective date of the bill, if after October 1, 2009;
- The rate of assessment is applied based on the motor vehicle fuel suppliers' gross receipts excluding both federal and state motor fuel excise taxes and the state petroleum inspection fee;
- The supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover any portion of the oil company assessment (anti-pass through provision);
- Any person that violates the anti-pass through provision will be subject to a penalty equal to the monetary gain;
- Provide that if the anti-pass through provision is found illegal or unconstitutional, that the severability of the remaining portions of the assessment will not be impacted;
- Provide that if there is a legal challenge to the assessment, in whole or in part, the assessment can continue to be collected during the period of the legal challenge;
- Income derived from the first sale in this state of bio-diesel fuel, or ethanol blended with gasoline of at least 85% ethanol, or alternative fuels (for example liquefied petroleum gas and compressed natural gas in s. 78.39, Wis. Stats.) is not included in the suppliers' gross receipt for purposes of calculating the assessment;
- Provide the same exemptions to the oil company assessments that are provided for the exempt or refundable use as applied to the state's motor fuel excise tax, for purposes of calculating gross receipts (ss. 78.01(2) and (2m), Wis. Stats., ss. 78.12(4)(a) 2 and 3, Wis. Stats.);
- For transfers between related parties, the point of first sale is the date of such transfer, and the gross receipts are calculated on a monthly basis using an index determined by rule, and
- Revenue collected from the assessment is deposited into the transportation fund (s. 25.40(1), Wis. Stats.).

Total Gross Receipts
\$0 to \$15,000,000
\$15,000,001 to \$75,000,000
\$75,000,000 to \$120,000,000
Over \$120,000,000

Assessment Rate
Exempt
0.5%
1.5%
2.5%

In general, compliance and enforcement activities would fall outside of the responsibilities of the Department. Rather, if the Governor chooses to include the oil company assessment in his request, the Executive Budget would establish authority and funding for another state agency, primarily DOR, to ensure compliance with and to enforce the provisions of the oil company assessment. Specific authority needed to enforce the oil company assessment, include:

- Provide DOR with the authority to administer the oil company assessment and to take any action, conduct any proceeding, and impose interest and penalties.
- Provide DOR with the authority to promulgate rules to implement the oil company assessment.
- Allow DOR to audit any supplier who would be subject to the oil company assessment to determine whether the supplier has taken any action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment.
- Require DOR to annually submit a report to the Governor and the Legislature that contains information on any audits conducted in relation to this authority in the previous year.
- Allow DOR to request the Attorney General to represent or assist in the prosecution of any case arising from the administration and enforcement of the oil company assessment.

JUSTIFICATION:

Over 90% of state revenues deposited into the Transportation Fund are derived from the motor fuel excise tax and vehicle registration related fees. The Department has always relied on a narrow funding base to pay for and support a broad range of transportation programs. Slow growth in gasoline consumption and the elimination of motor fuel tax indexing have combined to limit natural growth in transportation revenues. At the same time, Wisconsin faces significant transportation challenges next biennium, including:

- \$60.9 million in state funds to continue work on Interstate 94 from Milwaukee to the Illinois state line to meet the scheduled completion date of 2016 (a total of \$571 million is proposed for the project this biennium);
- \$181 million to begin work on the Zoo Interchange in Milwaukee County so that construction can begin by 2012 and meet a completion date of 2016;
- \$17.0 million to continue implementation of REAL ID;
- \$100 million in GO bonding, with annual debt service payments funded from the Transportation Fund, for transit in SE Wisconsin;
- Expanding Hiawatha passenger train service; and
- Inflationary cost increases for all highway-related programs and local aid programs.

In addition to these initiatives, rising fuel and utility costs have made it more expensive to maintain current levels of customer service department-wide. For example, higher fuel costs have contributed to a need for additional funding for highway maintenance and for the Division of State Patrol. As demands for transportation funding have increased, revenue growth has not kept pace. As a result, the Department is proposing the creation of an oil company assessment.

0779/P1
GF

Bryner, BB0203

DOA:.....Kornely, BB0352 - Oil company assessment

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

2009-11

PUF
where indicated

in 11-13-08

Don't Gen

not exceeding

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill imposes an assessment on a motor vehicle fuel supplier at the rate of 2.5 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 25.40 (1) (bd) of the statutes is created to read:

25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

SECTION 2. Chapter 77 (title) of the statutes is amended to read:

CHAPTER 77

TAXATION OF FOREST CROPLANDS;

REAL ESTATE TRANSFER FEES;

SALES AND USE TAXES; COUNTY

AND SPECIAL DISTRICT SALES

AND USE TAXES; MANAGED FOREST

LAND; TEMPORARY RECYCLING

SURCHARGE; LOCAL FOOD AND

BEVERAGE TAX; LOCAL RENTAL

CAR TAX; PREMIER RESORT AREA

TAXES; STATE RENTAL VEHICLE FEE;

DRY CLEANING FEES; REGIONAL

TRANSIT AUTHORITY FEE;

OIL COMPANY ASSESSMENT

SECTION 3. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is created to read:

CHAPTER 77

SUBCHAPTER XIV

OIL COMPANY ASSESSMENT

77.998 Definitions. In this subchapter:

(1) "Biodiesel fuel" means biodiesel fuel, as defined in s. 168.14 (2m) (a), that is not blended with any petroleum product.

(2) "Department" means the department of revenue.

(1)

(3) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

(2)

(4) "Related party" means a person whose relationship with the supplier is

3

described under section 267 (b) of the Internal Revenue Code.

(4)

(5) "Supplier" has the meaning given in s. 78.005 (14).

(5)

(6) "Terminal operator" has the meaning given in s. 78.005 (16).

6

77.9981 Imposition. (1) For the privilege of doing business in this state, there

(7)

is imposed an assessment on each supplier at the rate of 2.5 percent of the supplier's

(8)

gross receipts *annual* in each calendar quarter that are derived from the first sale in this

9

state of motor vehicle fuel received by the supplier for sale in this state, for sale for

(10)

export to this state, or for export to this state.

INSERT 3-10

11

(2) Any person, including a terminal operator, who is not a licensee under s.

12

78.09 and who either used any motor vehicle fuel in this state or has possession of

13

any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for

14

which the assessment under this subchapter has not been paid or for which no

15

supplier has incurred liability for paying the assessment, shall file a report, in the

16

manner described by the department, and pay the assessment based on the purchase

17

price of the motor vehicle fuel.

18

77.9982 Administration. (1) The department shall administer the

19

assessment under this subchapter and may take any action, conduct any proceeding,

20

and impose interest and penalties.

(21)

(2) The assessments imposed under this subchapter for each calendar quarter

22

are due and payable on the last day of the month next succeeding the calendar

(23)

quarter for which the assessments are imposed as provided by the department by

24

rule.

*gross receipts are earned**the following percentages*

1 (3) For purposes of determining the amount of the assessment imposed under
2 this subchapter, income derived from the first sale in this state of biodiesel fuel or
3 of ethanol blended with gasoline to create gasoline consisting of at least 85 percent
4 ethanol is not included in the supplier's ^{annual} gross receipts. For purposes of determining
5 the amount of the assessment imposed under this subchapter, with regard to a
6 transfer of motor vehicle fuel from a supplier to a related party, the point of first sale
7 in this state is the date of such transfer, and the ^{annual} gross receipts are calculated on a
8 monthly basis using an index determined by rule by the department. For purposes
9 of this subchapter, there is only one point of first sale in this state with regard to the
10 sale of the same motor vehicle fuel.

11 (4) No ^{person} supplier who is subject to the assessment imposed under this subchapter
12 shall take any action to increase or influence the selling price of motor vehicle fuel
13 in order to recover the amount of the assessment. ^{The person responsible for taking} A supplier who takes any action
14 to increase or influence the selling price of motor vehicle fuel to recover the amount
15 of the assessment is subject to a penalty equal to the amount of the gain the supplier
16 received from any increase in the selling price that is implemented in order to recover
17 the assessment amount or imprisonment of not more than 6 months, or both.

18 (5) At the secretary of revenue's request, the attorney general may represent
19 this state, or assist a district attorney, in prosecuting any case arising under this
20 subchapter.

21 (6) In addition to any other audits the department conducts to administer and
22 enforce this subchapter, the department may audit any supplier who is subject to the
23 assessment imposed under this subchapter to determine whether the supplier has
24 taken any action to increase or influence the selling price of motor vehicle fuel in
25 order to recover the amount of the assessment. Annually, the department shall

submit a report to the governor and the legislature, as provided under s. 13.172 (2), that contains information on all audits conducted under this subsection in the previous year.

(7) (a) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1, and 2. and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under ch. 71 apply to the assessment under this subchapter.

(b) Section 78.01 (2) (a) and (b), and (2m) (a) and (b), as it applies to the tax imposed under s. 78.01 (1), applies to the assessment imposed under this subchapter.

(8) The department shall deposit all revenue collected under this subchapter into the transportation fund.

SECTION 9141. ⁴³Nonstatutory provisions; Revenue.

(1) EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT. The department of revenue may promulgate emergency rules under section 227.24 of the statutes implementing subchapter XIV of chapter 77 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of revenue is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

SECTION 9341. ⁴³Initial applicability; Revenue.

(1) OIL COMPANY ASSESSMENT. The treatment of section 25.40 (1) (bd), subchapter XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the sales of

1 motor vehicle fuel on the first day of the 2nd calendar quarter beginning after the
2 effective date of this subsection
3

(END)

or on October 1, 2009, ^{is} whichever is later

LFB:.....Runde (FA) – Oil company assessment; rates

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 40**

INSERT 2-22

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1180, line 9: after that line insert:

3 ~~(1)~~ ^{(1)(b)} "Annual gross receipts" means the gross receipts that correspond to the
4 state's fiscal year."

5 **2.** Page 1180, line 10: delete ~~"(1)"~~ and substitute ~~"(1m)"~~.

6 **3.** Page 1180, line 19: delete "2.5 percent" and substitute "the following
7 percentages"

8 **4.** Page 1180, line 20: before "gross receipts" insert "annual".

9 **5.** Page 1180, line 20: delete "in each calendar quarter".

INSERT 3-10

1 **6.** Page 1180, line 22: delete that line and substitute "export to this state, or
2 for export to this state:".

3 **7.** Page 1180, line 22: after that line insert:

4 (a) For the first \$15,000,000 of the supplier's annual gross receipts, 0.0
5 percent.

6 (b) For that portion of the supplier's annual gross receipts that exceeds
7 \$15,000,000, but not \$75,000,000, 0.5 percent.

8 (c) For that portion of the supplier's annual gross receipts that exceeds
9 \$75,000,000, but not \$120,000,000, 1.5 percent.

10 (d) For that portion of the supplier's annual gross receipts that exceeds
11 \$120,000,000, ^{2.5}3 percent.

12 ~~**8.** Page 1181, line 8: delete "for each calendar quarter"~~

13 ~~**9.** Page 1181, line 10: delete "for" and substitute "in".~~

14 ~~**10.** Page 1181, line 10: delete "assessments are imposed" and substitute
15 "gross receipts are earned".~~

16 ~~**11.** Page 1181, line 15: on lines 15 and 18, before "gross" insert "annual".~~

17 (END)

Legislative Reference Bureau:..... Oil company assessment technical corrections

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 40**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1180, line 12: after that line insert.

3 ⁽⁴⁾ ~~(2m)~~ "Gross receipts" means all consideration received from the first sale of
4 motor vehicle fuel received by a supplier for sale in this state, for sale for export to
5 this state, or for export to this state, not including state or federal excise taxes, or
6 petroleum inspection fees, collected from the purchaser. "Gross receipts" does not
7 include consideration received from the first sale of motor vehicle fuel received by a
8 supplier for sale in this state, for sale for export to this state, or for export to this state,
9 if the motor vehicle fuel is motor vehicle fuel specified under s. 78.01 (2) or (2m)."

INSERT 4-3

1 ~~2.~~ Page 1181, line 13: delete "fuel or" and substitute "fuel,".

2 ~~3.~~ Page 1181, line 15: after "ethanol" insert ", or the fuels described in s. 78.01

3 (2) and (2m)".

4 ~~4.~~ Page 1181, line 22: delete "supplier" and substitute "person".

5 ~~5.~~ Page 1181, line 24: delete "A supplier who takes" and substitute "The person
6 responsible for taking".

7 ~~6.~~ Page 1182, line 3: after "both." insert "For purposes of this subsection, the
8 person responsible for taking any action to increase or influence the selling price of
9 motor vehicle fuel to recover the amount of the assessment is the officer, employee,
10 or other responsible person of a corporation or other form of business association or
11 the partner, member, employee, or other responsible person of a partnership, limited
12 liability company, or sole proprietorship who, as such officer, employee, partner,
13 member, or other responsible person, has a duty to establish the selling price of motor
14 vehicle fuel."

15 ~~7.~~ Page 1182, line 15: delete "(a)".

16 ~~8.~~ Page 1182, line 21: delete lines 21 and 22.

INSERT
4-17

17 (END)

Kreye, Joseph

From: Gary, Aaron
Sent: Wednesday, January 21, 2009 8:54 AM
To: Kreye, Joseph
Subject: FW: LRB 0779/P1

Aaron R. Gary
 Attorney, Legislative Reference Bureau
 608.261.6926 (voice)
 608.264.6948 (fax)
 aaron.gary@legis.state.wi.us

From: Byrnes, Tyler - DOA [mailto:Tyler.Byrnes@wisconsin.gov]
Sent: Tuesday, January 20, 2009 6:22 PM
To: Gary, Aaron
Subject: LRB 0779/P1

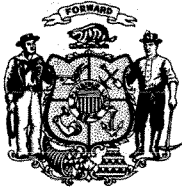
Aaron, can you make the following changes to LRB 0079/P1 – regarding the oil company assessment

- ✓ 1) DOR has requested a severability clause specifically be included with this language to clearly indicate that any portion that may be challenged is severable and does not prevent the continued administration of the remainder of the language. 990.001(11)
- 2) DOR currently receives motor fuel tax remittance on a monthly basis. Please modify the draft to have the assessment follow the same remittance schedule. Also clarify that the assessment would first be applied to the amounts reported on the first remittance after October 1, 2009.
- ✓ 3) On page 4, line 11, please add "authorized by law" after "any proceeding"
- ✓ 4) On page 4, line 12, please add "as provided in Chapter 71, subchapter XIII" after "and penalties"
- ✓ 5) On page 4, line 15, please remove ", as provided by the department by rule" and instead allow DOR to further clarify the provision by rule. This would ensure that the assessment would be effective on the date indicated rather than when a rule would be approved.
- ✓ 6) On page 5, line 5, please include "primarily" between "person" and "responsible"
- ✓ 7) On page 5, lines 9-10, please remove "or imprisonment of not more than 6 months, or both"
- ✓ 8) On page 5, lines 7-9, DOR indicates that "gain" has a specific meaning for financial and tax accounting purposes. DOR suggests that clearer language would be that the penalty is equal to "the amount of the assessment passed through to the purchaser."
- ✓ 9) On page 5, line 16, in place of "to establish" DOR suggests the use of "to approve," "to confirm," "to ratify" and "to validate."
- ✓ 10) On page 5, line 20 through page 6, line 2, DOR indicates that the audit report requirement as drafted creates a conflict with the confidentiality requirements. To address this please include additional language to restrict the sharing of this information with members of a particular legislative committee (perhaps Joint Finance or Joint Audit) or organization or its authorized agents and for the disclosure to occur only in a meeting closed to the public. See s. 71.78(4)(c), Stats. Language should also be added to state that this information is not subject to the Wisconsin Public Records law or words to that effect.

Thanks,

Tyler

01/21/2009



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0779/P1

JK:kjfrs

RMR

DOA:.....Byrnes, BB0203 - Oil company assessment

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-21-09

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill imposes an assessment on a motor vehicle fuel supplier at a rate not exceeding 2.5 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 25.40 (1) (bd) of the statutes is created to read:

1 25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

2 **SECTION 2.** Chapter 77 (title) of the statutes is amended to read:

3 **CHAPTER 77**

4 **TAXATION OF FOREST CROPLANDS;**

5 **REAL ESTATE TRANSFER FEES;**

6 **SALES AND USE TAXES; COUNTY**

7 **AND SPECIAL DISTRICT SALES**

8 **AND USE TAXES; MANAGED FOREST**

9 **LAND; RECYCLING**

10 **SURCHARGE; LOCAL FOOD AND**

11 **BEVERAGE TAX; LOCAL RENTAL**

12 **CAR TAX; PREMIER RESORT AREA**

13 **TAXES; STATE RENTAL VEHICLE FEE;**

14 **DRY CLEANING FEES; REGIONAL**

15 **TRANSIT AUTHORITY FEE;**

16 **OIL COMPANY ASSESSMENT**

17 **SECTION 3.** Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is
18 created to read:

19 **CHAPTER 77**

20 **SUBCHAPTER XIV**

21 **OIL COMPANY ASSESSMENT**

22 **77.998 Definitions.** In this subchapter:

23 (1) "Annual gross receipts" means the gross receipts that correspond to the
24 state's fiscal year.

1 (2) "Biodiesel fuel" means biodiesel fuel, as defined in s. 168.14 (2m) (a), that
2 is not blended with any petroleum product.

3 (3) "Department" means the department of revenue.

4 (4) "Gross receipts" means all consideration received from the first sale of motor
5 vehicle fuel received by a supplier for sale in this state, for sale for export to this state,
6 or for export to this state, not including state or federal excise taxes, or petroleum
7 inspection fees, collected from the purchaser. "Gross receipts" does not include
8 consideration received from the first sale of motor vehicle fuel received by a supplier
9 for sale in this state, for sale for export to this state, or for export to this state, if the
10 motor vehicle fuel is motor vehicle fuel specified under s. 78.01 (2) or (2m).

11 (5) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

12 (6) "Related party" means a person whose relationship with the supplier is
13 described under section 267 (b) of the Internal Revenue Code.

14 (7) "Supplier" has the meaning given in s. 78.005 (14).

15 (8) "Terminal operator" has the meaning given in s. 78.005 (16).

16 **77.9981 Imposition.** (1) For the privilege of doing business in this state, there
17 is imposed an assessment on each supplier at the rate of the following percentages
18 of the supplier's annual gross receipts that are derived from the first sale in this state
19 of motor vehicle fuel received by the supplier for sale in this state, for sale for export
20 to this state, or for export to this state:

21 (a) For the first \$15,000,000 of the supplier's annual gross receipts, 0.0 percent.

22 (b) For that portion of the supplier's annual gross receipts that exceeds
23 \$15,000,000, but not \$75,000,000, 0.5 percent.

24 (c) For that portion of the supplier's annual gross receipts that exceeds
25 \$75,000,000, but not \$120,000,000, 1.5 percent.

(d) For that portion of the supplier's annual gross receipts that exceeds \$120,000,000, 2.5 percent.

(2) Any person, including a terminal operator, who is not a licensee under s. 78.09 and who either used any motor vehicle fuel in this state or has possession of any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for which the assessment under this subchapter has not been paid or for which no supplier has incurred liability for paying the assessment, shall file a report, in the manner described by the department, and pay the assessment based on the purchase price of the motor vehicle fuel.

as authorized by law

77.9982 Administration. (1) The department shall administer the assessment under this subchapter and may take any action, ^{or} conduct any proceeding, and impose interest and penalties, *as provided under subch. XIII of ch. 71*

(2) The assessments imposed under this subchapter are due and payable on the last day of the month next succeeding the calendar quarter in which the gross receipts are earned, as provided by the department by rule.

(3) For purposes of determining the amount of the assessment imposed under this subchapter, income derived from the first sale in this state of biodiesel fuel, of ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol, or of the fuels described in s. 78.01 (2) and (2m) is not included in the supplier's annual gross receipts. For purposes of determining the amount of the assessment imposed under this subchapter, with regard to a transfer of motor vehicle fuel from a supplier to a related party, the point of first sale in this state is the date of such transfer, and the annual gross receipts are calculated on a monthly basis using an index determined by rule by the department. For purposes of this

as provided under s. 78.12(5) and

assessment passed through to the purchaser

primarily

1 subchapter, there is only one point of first sale in this state with regard to the sale
2 of the same motor vehicle fuel.

3 (4) No person who is subject to the assessment imposed under this subchapter
4 shall take any action to increase or influence the selling price of motor vehicle fuel
5 in order to recover the amount of the assessment. The person responsible for taking
6 any action to increase or influence the selling price of motor vehicle fuel to recover

7 the amount of the assessment is subject to a penalty equal to the amount of the gain
8 the supplier received from any increase in the selling price that is implemented in
9 order to recover the assessment amount or imprisonment of not more than 6 months,

10 or both. For purposes of this subsection, the person responsible for taking any action
11 to increase or influence the selling price of motor vehicle fuel to recover the amount
12 of the assessment is the officer, employee, or other responsible person of a corporation
13 or other form of business association or the partner, member, employee, or other
14 responsible person of a partnership, limited liability company, or sole proprietorship
15 who, as such officer, employee, partner, member, or other responsible person, has a
16 duty to establish the selling price of motor vehicle fuel.

17 (5) At the secretary of revenue's request, the attorney general may represent
18 this state, or assist a district attorney, in prosecuting any case arising under this
19 subchapter.

20 (6) In addition to any other audits the department conducts to administer and
21 enforce this subchapter, the department may audit any supplier who is subject to the
22 assessment imposed under this subchapter to determine whether the supplier has
23 taken any action to increase or influence the selling price of motor vehicle fuel in
24 order to recover the amount of the assessment. ^aAnnually, the department shall

25 submit a report to the governor and the legislature, as provided under s. 13.172 (2),

*approve, confirm, ratify,
validate
or validate*

*Subject to the confidentiality
provisions under s. 71.78(1) to (4) and (5) to (8),
as provided under sub. (7),*

1 that contains information on all audits conducted under this subsection in the
2 previous year.

3 (7) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and
4 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to
5 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.
6 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,
7 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under
8 ch. 71 apply to the assessment under this subchapter.

9 (8) The department shall deposit all revenue collected under this subchapter
10 into the transportation fund.

11 **SECTION 9143. Nonstatutory provisions; Revenue.**

12 (1) EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT. The department of
13 revenue may promulgate emergency rules under section 227.24 of the statutes
14 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.
15 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
16 of revenue is not required to provide evidence that promulgating a rule under this
17 subsection as an emergency rule is necessary for the preservation of the public peace,
18 health, safety, or welfare and is not required to provide a finding of emergency for a
19 rule promulgated under this subsection.

20 **SECTION 9343. Initial applicability; Revenue.**

21 (1) OIL COMPANY ASSESSMENT. The treatment of section 25.40 (1) (bd), subchapter
22 XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the sales of
23 motor vehicle fuel on the effective date of this subsection or on October 1, 2009,
24 whichever is later.

25 (END)

amount reported on the first remittance after

Kreye, Joseph

From: Byrnes, Tyler - DOA [Tyler.Byrnes@wisconsin.gov]

Sent: Wednesday, January 28, 2009 8:30 AM

To: Kreye, Joseph

Subject: Draft 09-0779/P2 Oil company assessment

Joe,

Can you change the percentage of the highest bracket in the oil company assessment to 3.0%

Thanks,

Tyler

01/28/2009



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0779/P2

JK:kjf:md

PR

DOA:.....Byrnes, BB0203 - Oil company assessment

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-28-09

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill imposes an assessment on a motor vehicle fuel supplier at a rate not exceeding 2.5 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 25.40 (1) (bd) of the statutes is created to read:

25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

SECTION 2. Chapter 77 (title) of the statutes is amended to read:

CHAPTER 77

TAXATION OF FOREST CROPLANDS;

REAL ESTATE TRANSFER FEES;

SALES AND USE TAXES; COUNTY

AND SPECIAL DISTRICT SALES

AND USE TAXES; MANAGED FOREST

LAND; RECYCLING

SURCHARGE; LOCAL FOOD AND

BEVERAGE TAX; LOCAL RENTAL

CAR TAX; PREMIER RESORT AREA

TAXES; STATE RENTAL VEHICLE FEE;

DRY CLEANING FEES; REGIONAL

TRANSIT AUTHORITY FEE;

OIL COMPANY ASSESSMENT

SECTION 3. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is created to read:

CHAPTER 77

SUBCHAPTER XIV

OIL COMPANY ASSESSMENT

77.998 Definitions. In this subchapter:

(1) “Annual gross receipts” means the gross receipts that correspond to the state’s fiscal year.

1 (2) "Biodiesel fuel" means biodiesel fuel, as defined in s. 168.14 (2m) (a), that
2 is not blended with any petroleum product.

3 (3) "Department" means the department of revenue.

4 (4) "Gross receipts" means all consideration received from the first sale of
5 motor vehicle fuel received by a supplier for sale in this state, for sale for export to
6 this state, or for export to this state, not including state or federal excise taxes, or
7 petroleum inspection fees, collected from the purchaser. "Gross receipts" does not
8 include consideration received from the first sale of motor vehicle fuel received by a
9 supplier for sale in this state, for sale for export to this state, or for export to this state,
10 if the motor vehicle fuel is motor vehicle fuel specified under s. 78.01 (2) or (2m).

11 (5) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

12 (6) "Related party" means a person whose relationship with the supplier is
13 described under section 267 (b) of the Internal Revenue Code.

14 (7) "Supplier" has the meaning given in s. 78.005 (14).

15 (8) "Terminal operator" has the meaning given in s. 78.005 (16).

16 **77.9981 Imposition.** (1) For the privilege of doing business in this state, there
17 is imposed an assessment on each supplier at the rate of the following percentages
18 of the supplier's annual gross receipts that are derived from the first sale in this state
19 of motor vehicle fuel received by the supplier for sale in this state, for sale for export
20 to this state, or for export to this state:

21 (a) For the first \$15,000,000 of the supplier's annual gross receipts, 0.0 percent.

22 (b) For that portion of the supplier's annual gross receipts that exceeds
23 \$15,000,000, but not \$75,000,000, 0.5 percent.

24 (c) For that portion of the supplier's annual gross receipts that exceeds
25 \$75,000,000, but not \$120,000,000, 1.5 percent.

(d) For that portion of the supplier's annual gross receipts that exceeds \$120,000,000, 2.5 percent.

(2) Any person, including a terminal operator, who is not a licensee under s. 78.09 and who either used any motor vehicle fuel in this state or has possession of any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for which the assessment under this subchapter has not been paid or for which no supplier has incurred liability for paying the assessment, shall file a report, in the manner described by the department, and pay the assessment based on the purchase price of the motor vehicle fuel.

77.9982 Administration. (1) The department shall administer the assessment under this subchapter and may take any action, or conduct any proceeding as authorized by law, and impose interest and penalties, as provided under subch. XIII of ch. 71.

(2) The assessments imposed under this subchapter are due and payable as provided under s. 78.12 (5) and as provided by the department by rule.

(3) For purposes of determining the amount of the assessment imposed under this subchapter, income derived from the first sale in this state of biodiesel fuel, of ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol, or of the fuels described in s. 78.01 (2) and (2m) is not included in the supplier's annual gross receipts. For purposes of determining the amount of the assessment imposed under this subchapter, with regard to a transfer of motor vehicle fuel from a supplier to a related party, the point of first sale in this state is the date of such transfer, and the annual gross receipts are calculated on a monthly basis using an index determined by rule by the department. For purposes of this

1 subchapter, there is only one point of first sale in this state with regard to the sale
2 of the same motor vehicle fuel.

3 (4) No person who is subject to the assessment imposed under this subchapter
4 shall take any action to increase or influence the selling price of motor vehicle fuel
5 in order to recover the amount of the assessment. The person primarily responsible
6 for taking any action to increase or influence the selling price of motor vehicle fuel
7 to recover the amount of the assessment is subject to a penalty equal to the amount
8 of the assessment passed through to the purchaser the supplier received from any
9 increase in the selling price that is implemented in order to recover the assessment
10 amount. For purposes of this subsection, the person responsible for taking any action
11 to increase or influence the selling price of motor vehicle fuel to recover the amount
12 of the assessment is the officer, employee, or other responsible person of a corporation
13 or other form of business association or the partner, member, employee, or other
14 responsible person of a partnership, limited liability company, or sole proprietorship
15 who, as such officer, employee, partner, member, or other responsible person, has a
16 duty to approve, confirm, ratify, or validate the selling price of motor vehicle fuel.

17 (5) At the secretary of revenue's request, the attorney general may represent
18 this state, or assist a district attorney, in prosecuting any case arising under this
19 subchapter.

20 (6) In addition to any other audits the department conducts to administer and
21 enforce this subchapter, the department may audit any supplier who is subject to the
22 assessment imposed under this subchapter to determine whether the supplier has
23 taken any action to increase or influence the selling price of motor vehicle fuel in
24 order to recover the amount of the assessment. Subject to the confidentiality
25 provisions under s. 71.78 (1) to (4) and (5) to (8), as provided under sub. (7), annually,

1 the department shall submit a report to the governor and the legislature, as provided
2 under s. 13.172 (2), that contains information on all audits conducted under this
3 subsection in the previous year.

4 (7) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and
5 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to
6 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.
7 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,
8 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under
9 ch. 71 apply to the assessment under this subchapter.

10 (8) The department shall deposit all revenue collected under this subchapter
11 into the transportation fund.

12 **SECTION 9143. Nonstatutory provisions; Revenue.**

13 (1) EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT. The department of
14 revenue may promulgate emergency rules under section 227.24 of the statutes
15 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.
16 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
17 of revenue is not required to provide evidence that promulgating a rule under this
18 subsection as an emergency rule is necessary for the preservation of the public peace,
19 health, safety, or welfare and is not required to provide a finding of emergency for a
20 rule promulgated under this subsection.

21 **SECTION 9343. Initial applicability; Revenue.**

22 (1) OIL COMPANY ASSESSMENT. The treatment of section 25.40 (1) (bd), subchapter
23 XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the amounts
24 reported on the first remittance after October 1, 2009.

25 (END)

Kreye, Joseph

From: Grinde, Kirsten - DOA [kirsten.grinde@wisconsin.gov]
Sent: Friday, January 30, 2009 1:41 PM
To: Kreye, Joseph
Cc: Hanaman, Cathlene; Kraus, Jennifer - DOA; Byrnes, Tyler - DOA
Subject: FW: LRB Draft: 09-0779/P3 Oil company assessment
Attachments: 09-0779/P3.pdf

Joe,

As we discussed, please ensure that s. 20.566(1)(u) is broad enough to allow DOR to use that appropriation to fund administration of the oil company assessment.

Please let me know if you have any questions.

Thanks,

Kirsten

From: Henry, Patty [mailto:Patty.Henry@legis.wisconsin.gov]
Sent: Wednesday, January 28, 2009 10:20 AM
To: Byrnes, Tyler - DOA
Cc: Grinde, Kirsten - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-0779/P3 Oil company assessment

Following is the PDF version of draft 09-0779/P3.

Kreye, Joseph

From: Grinde, Kirsten - DOA [kirsten.grinde@wisconsin.gov]
Sent: Thursday, January 29, 2009 7:00 PM
To: Kreye, Joseph
Cc: Byrnes, Tyler - DOA
Subject: FW: LRB Draft: 09-0779/P3 Oil company assessment
Attachments: 09-0779/P3.pdf

Joe,

Sorry for the late changes. Could you make the following modifications to the attached draft (09-0779/P3)?

- DOR has suggested moving the exclusion for biodiesel and E85 ethanol that is currently drafted under s. 77.9982(3) [Page 4, lines 16 to 20] to the definition of "gross receipts" under s. 77.998(4) [Page 3, lines 4 to 10]. Does this work with the other cross references – ss. 78.01 and 78.005?
- To provide more clarity for enforcement of the assessment, DOR requests the following changes on Page 5:
 - Line 4: remove "take any action to" and replace it with "not" increase and remove "or influence"
 - Line 6: remove "or influence"
 - Line 10: insert "primarily" after "person" and before "responsible"; remove "taking any action"
 - Line 11: change "increase" to "increasing" and remove "or influence"
 - Line 23: remove "taken any action to"; change "increase" to "increased" and remove "or influence"

Please let me know if you have any questions.

Thanks,

Kirsten

From: Henry, Patty [mailto:Patty.Henry@legis.wisconsin.gov]
Sent: Wednesday, January 28, 2009 10:20 AM
To: Byrnes, Tyler - DOA
Cc: Grinde, Kirsten - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-0779/P3 Oil company assessment

Following is the PDF version of draft 09-0779/P3.

01/30/2009